

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DIANE RECZEK,)	
)	
Plaintiff,)	
)	C.A. No. 07-00013-GMS
v.)	
)	
TILTON TERRACE OF DELAWARE,)	
L.L.C. d/b/a TILTON TERRACE; and,)	
JHA WILMINGTON, INC.,)	
)	
Defendants.)	

MOTION TO WITHDRAW AS COUNSEL

COMES NOW, Cross & Simon, LLC (“C&S”), who moves the Court for an Order authorizing it to withdraw as counsel for Defendant JHA Wilmington, Inc. (the “Defendant”) in the above-captioned civil action. In support thereof, movant states:

1. Defendant has failed to pay costs and fees incurred by C&S in accordance with the retention agreement entered into with C&S.
2. C&S has performed substantial work to date in investigating the facts of the case and responding to the Complaint, but has been paid only for a portion of that time and expense.
3. C&S has given several warnings to Defendant that C&S would move to withdraw as counsel if Defendant failed to satisfy its contractual obligations to C&S.
4. Defendant has advised C&S that it does not have sufficient funds to pay for C&S’ services going forward. C&S will suffer an unreasonable financial burden if forced to continue representing Defendant in this action.

5. In addition, the Defendant has failed to respond to several letters and phone calls and is not providing C&S with the information and support necessary to defend this litigation and to meet C&S' obligations to the Court and opposing counsel.

6. Pursuant to Delaware Professional Conduct Rule 1.16(b)(5), withdrawing is appropriate when the "client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled." In addition, withdrawing is appropriate if "the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client." Rule 1.16(b)(6). Withdrawal also is appropriate where "good cause" exists.

7. For the reasons set forth above, termination of representation is appropriate in this case under the applicable Professional Conduct Rules.

8. Notice of this motion is being provided to all parties in this case. Notice is being provided to Defendant via certified mail and also by facsimile.

9. Plaintiff's counsel has advised that Plaintiff does not oppose this motion as long as the Court provides a limited time frame for Defendant to obtain new counsel.

WHEREFORE, Cross & Simon, LLC requests the Court enter an Order permitting it to withdraw as counsel in the above-referenced matter.

CROSS & SIMON, LLC

By: /s/ Erica N. Finnegan.

Erica N. Finnegan (No. 3986)
913 North Market Street, 11th Floor
Wilmington, Delaware 19899-1380
302-777-4200
302-777-4224 (facsimile)

*Counsel for JHA Wilmington, Inc.
d/b/a Tilton Terrace*

Dated: May 21, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DIANE RECZEK,)	
)	
Plaintiff,)	
)	C.A. No. 07-00013-GMS
v.)	
)	
TILTON TERRACE OF DELAWARE,)	
L.L.C. d/b/a TILTON TERRACE; and,)	
JHA WILMINGTON, INC.,)	
)	
Defendants.)	

STATEMENT PURSUANT TO LOCAL RULE 7.1.1

Counsel hereby certifies that the content of its Motion to Withdraw as Counsel (the "Motion") was discussed with Plaintiff's counsel and Plaintiff's counsel has advised that Plaintiff does not oppose this motion as long as the Court provides a limited time frame for Defendant to obtain new counsel.

CROSS & SIMON, LLC

By: /s/ Erica N. Finnegan.
Erica N. Finnegan (No. 3986)
913 North Market Street, 11th Floor
Wilmington, Delaware 19899-1380
302-777-4200
302-777-4224 (facsimile)

*Counsel for JHA Wilmington, Inc.
d/b/a Tilton Terrace*

Dated: May 21, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DIANE RECZEK,)	
)	
Plaintiff,)	C.A. No. 07-00013-GMS
)	
v.)	
)	
TILTON TERRACE OF DELAWARE,)	
L.L.C. d/b/a TILTON TERRACE; and,)	
JHA WILMINGTON, INC.,)	
)	
Defendants.)	

ORDER PERMITTING WITHDRAWAL OF DEFENSE COUNSEL

The Court having considered the Motion to Withdraw as Counsel to Defendant filed by Cross & Simon, LLC. and the Court having determined that good and adequate cause exists for granting the Motion;

IT IS HEREBY ORDERED that the Motion is granted and Cross & Simon, LLC is permitted leave to withdraw as counsel for Defendant JHA Wilmington, Inc. in this action; and

IT IS FURTHER ORDERED that Defendant JHA Wilmington, Inc. shall cause new counsel to appear on its behalf on or before **June 15, 2007**. Failure to cause new counsel to enter an appearance by that date may result in the Court entering judgment against JHA Wilmington, Inc. in favor of Plaintiff.

Dated: _____, 2007

Judge Gregory M. Sleet

CERTIFICATE OF SERVICE

I, Erica N. Finnegan, certify this 21st day of May, 2007, that I caused the attached Motion to Withdraw as Counsel to be electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to counsel of record. I further certify that a copy of the foregoing documents were served on the following counsel and parties in the manner indicated:

By Hand Delivery

G. Kevin Fasic, Esquire
Law Offices of G. Kevin Fasic, LLC
1225 King Street, Suite 200
Wilmington, DE 19801

By Facsimile (215-546-7440)

Kevin I. Lovitz, Esquire
The Lovitz Law Firm, P.C.
1528 Walnut Street, Suite 1401
Philadelphia, PA 19102

By Certified U.S. Mail and by
Facsimile (517-796-8767)

JHA Wilmington, Inc.
c/o Red Oak Healthcare Management
2800 Wildwood Ave.
Jackson, MI 49202

Attn: John G. Hupp, President & CEO

/s/ Erica N. Finnegan

Erica N. Finnegan (DE No. 3986)
Cross & Simon, LLC
913 North Market Street, 11th Floor
Wilmington, Delaware 19801
302-777-4200 (phone)
302-777-4224 (facsimile)
efinnegan@crosslaw.com

*Counsel for JHA Wilmington, Inc.
d/b/a Tilton Terrace*